

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 917 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? No.

2. To be referred to the Reporter or not? No.

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3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?
No

DIVISIONAL CONTROLLER

Versus

VAKTUSINH G PARMAR

Appearance:

MR HARDIK C RAWAL for Petitioner

MR HK RATHOD for Respondent No. 1

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 19/07/96

ORAL JUDGEMENT

The Divisional Controller of Gujarat State Road
Transport Corporation , Himatnagar Division has preferred
the present writ petition under article 227 of the
Constitution of India to challenge the award passed in
Reference (LCA) No. 206/82 passed on 27.6.84 by the

Presiding Officer, Labour Court, Ahmedabad.

2. The respondent Vaktusinh G. Parmar was working as a conductor under the petitioner since about 18 years prior to 22.4.80. On 22.4.80 when his bus was checked it was found he had not given tickets to 14 adult persons 11 children though he had received money from them towards the fare of those tickets. He was charge sheeted on 9.5.80 and thereafter a departmental inquiry was held. In the departmental inquiry it was found that he had committed misconduct with which he was charged and on 13.10.80, an order of dismissal from service was passed against the respondent.

2. Being dissatisfied with the said order of dismissal he had approached the Labour Court by way of Ref.(LCA) No. 206/82.

3. Though initially the respondent had challenged the legality and validity of the departmental inquiry held against him, at the oitime of hearing, he had passed a purshis before the Labour Couirt withdrawing his contentions as regards the legality and validity of the departmental inquiry held against and he had admitted the validity and legality of the departmental inquiry oand there was only one prayer for consideration of the adequacy of the punishment passed against him by the disciplinary authority.

4. The disciplinary authority came to the conclusion that the order of dismissal was not proper punishment and that reference will have to be partly allowed as regards adequacy of the punishment awarded to the respondent. He therefore, passed the following order:

"The Reference is partially allowed. The dismissal of the workman is set aside and the S.T.Corporation is ordered to reinstate the workman on the post of a helper without back wages and with continuity of service and protect the pay drawn wages and with continuity of service and protect the pay drawn by him at the date of termination. The award to be carried out from the date of its publication. No order as to costs."

The S.T. corporation has come before this court against the said order of the Presiding Officer of the Labour Court. Learned advocate for the corporation has taken me through the order passed by the Presiding Officer, Labour Court and has rightly contended before me that learned

Presiding Officer, Labour Court has not given any reason as to why he had come to the conclusion that the punishment awarded to the respondent was disproportionate to his guilt and on what grounds he was awarding the lessor punishment than the punishment awarded by him. Learned advocate for the corporation further cited before me the case of Gujarat State Road Transport Corporation vs. Kacharaji Motiji Parmar 1993 GLR 302 in support of his contention that the order passed by the Presiding Officer, Labour Court deserves to be set aside and the order of dismissal passed against the respondent will have to be restored.

5. As against this the learned advocate for the respondent Shri Rathod vehemently urged before me that the discretion used by the Presiding Officer, Labour Court could not be interfered with by the court while exercising discretion under article 227 of the Constitution of India. He further brought to my notice that though the present petition was admitted, at the time of admission, interim relief staying the operation of the order passed by the Labour Court was not granted in favour of the petitioner. He further submitted that before me that in view of the refusal to issue stay order, the respondent is already reinstated as helper in the petitioner corporation in the year 1986 and since 1986, till today he has worked as helper. He has submitted that from the date of reinstatement i.e. from 31.1.86 till today there is no commission of any default by him while working as a helper. He has further submitted before me that the petitioner is now 52 years old. He has got six minor children out of which there are 2 daughters and besides the petitioner there is no earning member in his family and therefore, in the circumstances the court would be justified in not setting aside the order passed by the Lower Court.

6. At the outset it may be stated that the order of the Presiding Officer of the Labour court does not justify his alteration of the punishment awarded to the respondent. The learned Presiding Officer has not given any reasons as to why he was inclined to give lessor punishment to the respondent. He has totally ignored the previous misconduct committed by the respondent which was brought to the notice of the Presiding Officer. He has misapplied the case cited before him. His interfering with the order of punishment is perverse. It cannot be justified on any grounds.

7. It is true that more than ten years have passed

from the filing of the petition and unfortunately for the petitioner and fortunately for the respondent at the time of admission of this petition there was no stay against the operation of the order passed by the Labour Court and because of the same the respondent has joined as helper on 31.1.86. He is working in that capacity from that date till today. He has filed his affidavit mentioning therein that he has not committed any misconduct and has not misbehaved while working as helper and the submission of his is not disputed by the petitioner by filing counter affidavit. Therefore, in view of the particular circumstances of the case, I would refrain from substantially interfering with the order passed by the Labour Court by which he set aside the order of dismissal of the respondent. But this is being done in view of the particular facts and circumstances of the case and it should not be treated as a precedent in any other case. , In view of the previous conduct of the employee-respondent, the Labour Court even if wanted to give him reinstatement in a lower cadre, it ought to have awarded some punishment to him besides denial of back wages. Therefore, though I may affirm the order of reinstatement to the post of helper I would add further punishment to the respondent of stoppage of five increments in the cadre of helper with permanent effect. Therefore, in view of the peculiar facts and circumstances of this case I partly allow the present writ petition by passing the following order:

8. The order passed by the Labour Court, Ahmedabad dated 27.6.84 in Ref.(LCA) No.206/82 stands modified by adding in the said order of stoppage of five increments in the cadre of helper with permanent effect with effect from the date of this order (i.e. 19.7.96) besides the order passed by the Presiding Officer of the Labour Court. Rest of the order of the Presiding Officer, Labour Court is maintained. Parties to bear their own costs.

(S.D.Pandit.J)